

Message Text

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65

ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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 L-03 OES-06 PM-04 NSC-05 SP-02 SS-15 H-02 IO-13 /074 W

----- 088370

P R 021625Z DEC 76

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC PRIORITY 8964

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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E. O. 11652: N/A

TAGS: EAIR, BR

SUBJECT: FUEL TAX EXEMPTION FOR NON-SKEDS

REFS: A. STATE 288854, B. BRASILIA 5413, C. BRASILIA 8868,

 D. BRASILIA 9308, E. BRASILIA 9435

1. SUMMARY. AMBASSADOR, IN CALL ON CHIEF OF FOREIGN MINISTRY'S ECONOMIC DEPARTMENT, HAS MADE PRESENTATION ON FUEL TAX ISSUE ON BASIS OF REFTEL A. BRAZILIAN OFFICIAL HAS PROMISED TO REVIEW ISSUE AND RESPOND TO AMBASSADOR. END SUMMARY.

2. AFTER CANCELLATION OF A NOVEMBER 29 APPOINTMENT FORCED BY CEREMONIES FOR DECEASED MEXICAN AMBASSADOR, AMBASSADOR, ON DECEMBER 1, CALLED ON AMBM CABRAL DE MELLO, CHIEF OF FOREIGN MINISTRY'S ECONOMIC DEPARTMENT, TO DISCUSS FUEL TAX ISSUE PURSUANT TO REFTEL A. IN COURSE OF HIS PRESENTATION, AMBASSADOR REVIEWED HISTORY OF THE ISSUE, RECALLED ASSURANCES GIVEN BY FOREIGN MINISTER AND BRIG. DEOCLECIO THAT GOB WOULD SEEK RAPID SOLUTION, AND NOTED THAT SOME TWO MONTHS HAD PASSED BY SINCE OUR LAST NOTE. FROM EMBASSY' CONTACTS WITH THE FOREIGN MINISTRY AND WITH CERNAL, HE SAID, IT WAS NOT ENTIRELY CLEAR WHAT THE STATUS OF THIS ISSUE WAS WITHIN THE LIMITED OFFICIAL USE

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GOB; WE UNDERSTOOD, HOWEVER, THAT THERE APPEARED TO BE

LOOMING AN IMPASSE BETWEEN THE U.S. AND BRAZILIAN POSITIONS.

3. THE AMBASSADOR SAID HE FIRST WISHED TO SEEK CABRAL DE MELLO'S ADVICE ON THE DESIRABILITY OF HIS PERSONALLY CONTACTING THE HEADS OF THE PERTINENT GOB ORGANS -- THE AIR AND FINANCE MINISTRIES -- IN AN EFFORT TO MAKE SURE THAT EVERYTHING POSSIBLE HAD BEEN DONE TO BREAK THE IMPASSE.

4. AMBASSADOR CONTINUED THAT HE WAS GREATLY CONCERNED OVER A PROSPECTIVE DECAY OF WHAT HAD ALWAYS BEEN A CONSTRUCTIVE AND COOPERATIVE RELATIONSHIP IN THE AVIATION AREA. THE APPARENT IMPASSE OVER WHAT WAS, IN A BROADER AVIATION CONTEXT, AND INTRINSICALLY MINOR ISSUE WAS OBLIGING THE U.S. AGENCIES CONCERNED TO MOVE TO THE CONVICTION THAT, FOR REASONS OF U.S. LAW AND POLICY, THEY COULD NO LONGER REMAIN ESSENTIALLY PASSIVE. AMBASSADOR THEN OUTLINED, ON AN INFORMAL BASIS, ACTIONS WHICH U.S. AGENCIES HAVE UNDER CONSIDERATION PURSUANT TO REFTTEL A, SUGGESTING THAT THE SUSPENSION OF DOMESTIC FUEL ALLOCATIONS FOR VARIG'S CHARTER OPERATIONS WAS LIKELY TO BE A FIRST STEP. AMBASSADOR STRESSED OUR FIRM DESIRE TO RESOLVE ISSUE AAS A PROBLEM DISCRETE FROM OTHER QUESTIONS OF CHARTER OPERATIONS AND RECALLED OUR WILLINGNESS EXPRESSED IN OUR SEPT. 30 NOTE TO CONSIDER THE FEASIBILITY OF A CHARTER BILATERAL AT AN APPROPRIATE TIME TO MEET CERNAL'S CONCERNS. FROM U.S. STANDPOINT, IT WOULD BE HIGHLY DESIRABLE FOR GOB TO GIVE US A CLEAR EXPRESSION OF ITS POSITION.

5. IN HIS REPLY, CABRAL DE MELLO NOTED THAT FOREIGN MINISTRY WOULD LIKE TO SEE A SOLUTION TO THE ISSUE AS A SEPARATE PROBLEM, AND IN CONFORMANCE WITH THE FOREIGN MINISTER'S ASSURANCES HAD SOUGHT TO RESOLVE ISSUE WITH THE BRAZILIAN TECHNICAL AGENCIES. THE PROBLEM WAS, HOWEVER, THAT BRAZILIAN LAW AND PRACTICE CLEARLY DISTINGUISH BETWEEN SCHEDULED AND NON-SCHEDULED CARRIERS AND THAT THE TAX CAN BE WAIVED ONLY BY AN INTERNATIONAL AGREEMENT THAT WOULD SUPERSEDE DOMESTIC LEGISLATION. THE BRAZILIAN RESPONSE TO THE 1966 ICAO RESOLUTION WAS IN ERROR; BRAZIL DID NOT, IN FACT, APPLY THAT RESOLUTION. THE ESSENCE OF THE ISSUE, IN CABRAL DE MELLO'S VIEW, WAS THAT THE U.S., LIMITED OFFICIAL USE

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UNDER THE SECRETARY OF COMMERCE'S FINDING OF RECIPROCITY, WAS ABLE TO EXTEND THE TAX EXEMPTION TO ALL TYPE OF AIRCRAFT, WHILE BRAZIL COULD NOT; IN FACT, THE LAW VERY SPECIFICALLY RESTRICTS THE GOB FROM DOING SO. CERNAL, WHILE WILLING TO CONSIDER THE EXEMPTION OF NON-SKED CHARTER FLIGHTS, WANTS ALSO TO DEAL WITH THE OTHER ASPECTS OF CHARTER OPERATIONS.

6. THE AMBASSADOR NOTED THAT HE HAD POINTED OUT IN AUGUST THE BRAZILIAN POSITION WAS A GREAT DISAPPOINTMENT TO US BECAUSE OF THE LONG DELAYS IMPLICIT IN THE NEGOTIATION OF A COMPREHENSIVE CHARTER ARRANGMENT. THE U.S. AGENCIES COULD NOT ACCEPT AN INDEFINITE DELAY. EXEMPTION OF THE NON-SKEDS, FROM THE U.S. STANDPOINT, WAS CLEARLY PART OF THE RECIPROCITY QUESTION, AND INVOLVED LEGAL REQUIREMENTS FOR USDOC.

7. IN THE COURSE OF THE DISCUSSION, CABRAL DE MELLO SOUGHT CLARIFICATION OF THE ACTION CONTEMPLATED BY USG. AMBASSADOR NOTED THAT VARIG HAD RECENTLY SOUGHT AN ALLOCATION OF U.S. DOMESTIC FUEL AND HAD BEEN GRANTED AN ALLOCATION FOR 90 DAYS; AN EXTENSION WAS PENDING. AMBASSADOR READ THE LANGUAGE OF REFTEL A, PARA 3, AND, IN RESPONSE TO CABRAL DE MELLO'S QUESTION, EMPHASIZED THAT THE PROSPECTIVE REFUSAL OF AN ALLOCATION OF DOMESTIC FUEL DID NOT INVOLVE THE WITHDRAWAL OF THE EXISTING TAX EXEMPTION, WHICH WAS DEPENDENT ON A COMMERCE DEPARTMENT FINDING OF CESSATION OF RECIPROCITY (A POSSIBILITY THAT HAD BEEN ALLUDED TO). THE AMBASSADOR DESCRIBED THE CON-CESSION OF DOMESTIC FUEL TO INTERNATIONAL AIRLINES AS A UNILATERALLY GRANTED BENEFIT, SUBJECT TO THE JUDGMENT OF FEA.

8. CABRA CONCLUDED THE MEETING BY THANKING THE AMBASSADOR FOR HIS CLEAR PRESENTATION, PROMISED TO PURSUE THE MATTER AND TO RESPOND PERSONALLY TO THE AMBASSADOR CONCERNING THE LATTER'S INQUIRY ABOUT APPROACHING OTHER MINISTRIES AS SOON AS POSSIBLE. CRIMMINS

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